



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### TIDEWATER REGIONAL OFFICE

Matthew J. Strickler  
Secretary of Natural Resources

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David K. Paylor  
Director

Craig R. Nicol  
Regional Director

**STATE AIR POLLUTION CONTROL BOARD  
ENFORCEMENT ACTION - ORDER BY CONSENT  
ISSUED TO  
BON SECOURS – DEPAUL MEDICAL CENTER, INC.  
FOR  
DEPAUL MEDICAL CENTER  
Registration No. 60299**

### **SECTION A: Purpose**

This is a Consent Order issued under the authority of Va. Code §§ 10.1-1309 and -1316, between the State Air Pollution Control Board and Bon Secours – DePaul Medical Center, Inc., regarding DePaul Medical Center, for the purpose of resolving certain violations of the Virginia Air Pollution Control Law and the applicable regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "Board" means the State Air Pollution Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and -1301.
2. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
3. "DePaul" means Bon Secours – DePaul Medical Center, Inc., a corporation authorized to do business in Virginia and its affiliates, partners, and subsidiaries. DePaul is a "person" within the meaning of Va. Code § 10.1-1300.
4. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.

5. "Facility" means the DePaul Medical Center located at 150 Kingsley Lane, in Norfolk, Virginia.
6. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 10.1-1309.
7. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the Virginia Air Pollution Control Law.
8. "Permit" means a Stationary Source Permit to Modify and Operate, which DePaul applied for and DEQ issued under Registration No. 60299, issued on February 20, 2008.
9. "Regulations" or "Regulations for the Control and Abatement of Air Pollution" mean 9 VAC 5 chapters 10 through 80.
10. "TRO" means the DEQ Tidewater Regional Office located in Virginia Beach, Virginia.
11. "Va. Code" means the Code of Virginia (1950), as amended.
12. "VAC" means the Virginia Administrative Code.
13. "Virginia Air Pollution Control Law" means Chapter 13 (§ 10.1-1300 *et seq.*) of Title 10.1 of the Va. Code.

#### **SECTION C: Findings of Fact and Conclusions of Law**

1. DePaul owns and operates the Facility, a general medical and surgical hospital, in the Norfolk, Virginia. The Facility is the subject of the Permit, which allows DePaul to operate boilers for emergency power generation.
2. On August 24, 2018, DEQ staff conducted a file review and observed that the 2018 Semi-Annual Fuel Quality Report for January 1 to June 30, 2018, due July 30, 2018, was not received until August 20, 2018, 21 days late.
3. Condition 18 of the Permit states, "The permittee shall submit fuel quality reports for the NSPS boilers to the Tidewater Regional Office within 30 days after the end of each semi-annual period. The semi-annual periods shall be defined as January through June, and July through December."
4. 9 VAC 5-170-160(A) states, "The board may impose conditions upon permits and other approvals which may be necessary to carry out the policy of the Virginia Air Pollution Control Law, and which are consistent with the regulations of the board. Except as otherwise specified, nothing in this chapter shall be understood to limit the power of the board in this regard. If the owner or other person fails to adhere to the conditions, the

board may automatically cancel the permit or approvals. This section shall apply, but not be limited, to approval of variances, approval of control programs, and granting of permits.”

5. Va. Code § 10.1-1322(A) states, “Pursuant to regulations adopted by the Board and subject to § 10.1-1322.01, permits may be issued, amended, revoked or terminated and reissued by the Department and may be enforced under the provisions of this chapter in the same manner as regulations and orders. Failure to comply with any condition of a permit shall be considered a violation of this chapter and investigations and enforcement actions may be pursued in the same manner as is done with regulations and orders of the Board under the provisions of this chapter.”
6. On January 29, 2019, based on the file review the Department issued a NOV to DePaul for the violations described in paragraphs C(2) through C(5), above.
7. On February 1, 2019, DEQ met with DePaul representatives. In this meeting DePaul described the new system they had put in place to ensure the Semi-Annual Fuel Quality Reports would be submitted within 30 days of the relevant report period.
8. Based on the results of the August 24, 2018, file review, the Board concludes that DePaul has violated Condition 18 of the Permit, 9 VAC 5-170-160(A), and Va. Code § 10.1-1322(A), as described in paragraphs C(2) through C(5), above.
9. DePaul has submitted documentation that verifies that the violations described in paragraphs C(2) and C(5), above, have been corrected.

#### **SECTION D: Agreement and Order**

Accordingly, by virtue of the authority granted it in Va. Code §§ 10.1-1309 and -1316, the Board orders DePaul, and DePaul agrees to pay a civil charge of \$1,703 within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier’s check payable to the “Treasurer of Virginia,” and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

DePaul, shall include its Federal Employer Identification Number (FEIN)

541820093 with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF). If the Department has to refer collection

of moneys due under this Order to the Department of Law, DePaul shall be liable for attorneys' fees of 30% of the amount outstanding.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend this Order with the consent of DePaul for good cause shown by DePaul, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in the NOV dated January 29, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the facility; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, DePaul admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. DePaul consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. DePaul declares it has received fair and due process under the Administrative Process Act and the Virginia Air Pollution Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by DePaul to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. DePaul shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. DePaul shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on

its part. DePaul shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

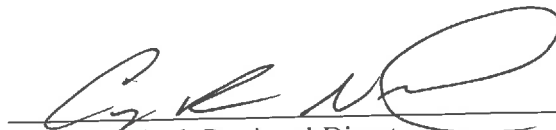
Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and DePaul. Nevertheless, DePaul agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
  - a. The Director or his designee terminates the Order after DePaul has completed all of the requirements of the Order;
  - b. DePaul petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
  - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to DePaul.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve DePaul from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by DePaul and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of DePaul certifies that he or she is a responsible official [or officer] authorized to enter into the terms and conditions of this Order and to execute and legally bind DePaul to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of DePaul.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, DePaul voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 1<sup>st</sup> day of April, 2019.

  
Craig R. Nicol, Regional Director  
Department of Environmental Quality

Bon Secours – DePaul Medical Center, Inc. voluntarily agrees to the issuance of this Order.

Date: 3-19-19 By: PAUL GADEN, CEO  
(Person) (Title)  
Bon Secours – DePaul Medical Center, Inc.

Commonwealth of Virginia  
City/County of PORTSMOUTH

The foregoing document was signed and acknowledged before me this 19th day of March, 2019, by Paul Gaden who is CEO of Bon Secours – DePaul Medical Center, Inc., on behalf of the corporation.

Nanette Marie Stavola  
Notary Public

7665654  
Registration No.

My commission expires: 11/30/2019

Notary seal:

